High Court of Madhya Pradesh
JABALPUR.
24 JUL 1998
Reg. No. 142
Recept Clerk
High Court, Jabalpur

Cri A 1719/98

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CF0000059884

9 / (Jail)
P. R. 11/94/2,000

APPEAL OF PRISONER

D3(Cri)

No. 7955 Name समार सिंह पेन्डी

Father's name लल्लू सिंह गोंड साकिन-डोंगी टोला-अकलतरा

Residence जिला-जांजगीर (मप्र०) Age 37 साल

Sentenced to आजीवन कारावास On 17/6/98

Under section 302 भा०दं०वि० by माननीय अपर सत्र न्यायाधीश जांजगीर जिला-जांजगीर (मप्र०)

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received 16/7/98

3 Date on which Appeal sent 20/7/98

4 Whether the prisoner wishes to be represented or not – Yes / No

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No. 7955 Name समार सिंह आ० लल्लू सिंग गोंड

Confined in केन्द्रीय Jail रायपुर (मप्र०)

No. 320 /विधि/98 Dated 20/7/1998

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ माननीय अतिरिक्त पंजीयक महोदय माननीय उच्च न्यायालय मप्र० जबलपुर together which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्न:- मप्र०क्र० 322/96 की प्रमाणित सत्य प्रतिलिपि।

Superintendent

Jail

Date of receipt in office

Date of receipt record to accompany the

Memo of Appeal to the Appellate court

No Dated 199

Forwarded to the

Date of receipt in Appell

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

मामला क्रमांक Cr. App. 1719/98 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

30.3.2006

Mr. Akhil Mishra, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor for the State/respondent.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J: -

By this appeal under Section 374 (2) of the Cr.P.C. accused/ appellant Samaar Singh has questioned the legality and correctness of the judgment of conviction and order of sentence dated 17.6.1998, passed by learned Additional Sessions Judge, Janjgir, in S.T. No. 322/96, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that on 25.6.1996 accused Samaar Singh after committing the murder of his brother Lachchan Singh with axe went to the house of PW-3, Islam Mohammed carrying blood stained axe, weapon of offence in his hand, where the mother of accused was working, and sat in the Verandah of the house

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of Islam Mohammed (PW-3). Clothes of accused were also stained with blood. On enquiry by Islam Mohammed (PW-3), the accused narrated that he & his brother has quarreled and he left the house. Thereafter, when Sapara Bai, mother of accused & deceased came, Islam Mohammed informed her about the incident as also about the blood stained clothes of accused and asked her to go and see what has happened. On which Sapara Bai went to the place of occurrence and saw that Lachchan Singh was lying dead. From where Sapara Bai came and informed Narbada Prasad, who lodged the report Ex.P-5 in the Police Station Outpost, Baloda. Receiving the report by said Narbada Prasad, the Station House Officer registered the offence at Crime No.69/96 under Section 302 of the I.P.C. anf left for the scene of occurrence. He prepared the Panchanama (Ex.P-1) of the body of Lachchan Singh and took into possession the blood stained soil and plain soil from the place of occurrence under Ex.P-2. He also took into possession the axe-weapon of offence & blood stained clothes from the possession of accused under Ex.P-3 & P-4 respectively. Site plan (Ex.P-8) of the place of occurrence was prepared by Halka Patwari. Dead body of Lachchan Singh was sent for post mortem examination to Primary Health Centre, Baloda under Ex.P-9, where Dr. U.K. Tiwari (PW-10) conducted the postmortem on the body of deceased and prepared the postmortem report Ex.P-10, in which he noticed as many

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as 14 injuries on the body of deceased out of which 13 were incised wounds on the vital parts of body. Seized articles were sent to Forensic Science Laboratory, Sagar for examination from where report Ex.P-20 was received.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Janjgir, for commission of offence under Section 302 of the I.P.C. against the accused, who in turn committed the case to learned Sessions Judge, Bilaspur, from where learned Additional Sessions Judge, Janjgir received the case on transfer for trial.

The prosecution examined as many as fifteen witnesses in order to prove the charge against the accused. Statement of accused was recorded under Section 313 of the Cr.P.C. in which he pleaded innocence about the prosecution evidence. He admitted that the police recovered the axe from his possession, but the same was not stained with blood. Similarly, he admitted that the clothes were recovered from his possession, but the same were also not stained with blood. He has further stated that he is innocent and has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing learned counsel for respective parties, convicted and sentenced the accused as mentioned in Para-1 of this judgment.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

We have heard Mr. Akhil Mishra, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor on behalf of the State/respondent.

Homicidal death of Lachchan Singh is not in dispute.

As far as the involvement of accused/appellant in committing the murder of Lachchan Singh is concerned, there is no direct evidence in this case connecting the accused with the crime in question. The case of the prosecution rests on the circumstantial evidence i.e.

1. the accused made extra judicial confession before Islam Mohammed (PW-3), Raisingh (PW-4) & Bhuwan Bhaskar (PW-9);
2. the blood stained axe, weapon of offence and blood stained clothes of accused were taken into possession by the Investigating Officer from the accused; and
3. there was dispute between the accused and his deceased brother about the sale price of cart.

Now we shall proceed to examine the evidence in order to find out whether the prosecution has been able to establish the crime in question against the accused/appellant. In order to rest the conviction based on circumstantial evidence, the Court is required to

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

ascertain as to whether the prosecution has been able to connect the accused with the crime in question based on the circumstantial evidence, as per following principles laid down by the Hon'ble Apex Court;

1. the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
2. those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
3. the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
4. the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

Learned counsel for the accused/appellant argued that so far as the evidence of Islam Mohammed (PW-3) is concerned, same cannot be termed as extra judicial confession because in clear words the accused has not made any extra judicial confession admitting that he

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

had committed murder of Lachchan Singh, therefore, the evidence of Islam Mohammed (PW-3) is of no relevance. He further argued that so far as the evidence of Raisingh (PW-4) & Bhuwan Bhaskar (PW-9) is concerned, same was made in presence of the police, therefore, the evidence of these witnesses is not admissible.

On the other hand, learned Additional Public Prosecutor for the State supported the judgment of trial court.

In order to appreciate the arguments advanced by learned counsel for the accused/appellant, if we scrutinize the evidence of PW-3 Islam Mohammed, in para-2 of evidence this witness has stated that on 25.6.1996 at about 3 to 3.30 p.m. accused was sitting in front of Verandah of his house holding axe in his hand. When he came out from the house, he saw that accused was holding axe in his hand and his blue colour shirt was stained with blood, on which he enquired from the accused as to why he is roaming carrying axe in his hand. Where he will go while carrying axe in his hand? On this, accused replied that he should not take the axe, as he and his brother has quarreled and thereafter he left the place. Thereafter, Sapara Bai, mother of accused came and he informed her about the incident.

It is true that evidence of Islam Mohammed (PW-3) does not fall under the category of extra judicial confession, but the evidence of Islam Mohammed, which has been referred above, is relevant under

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Section 6 of the Evidence Act which envisages that "*facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places*".

From the prosecution evidence, it is established that Lachchan Singh died on account of various injuries sustained by him and as per evidence of PW-10 Dr. U.K. Tiwari the deceased received as many as 13 incised wounds, there was a fracture of skull bone and doctor has further stated that blood stained clothes of deceased were also examined by him and the accused made statement on the same day just after the incident before this witness PW-3 Islam Mohammed that he has quarreled with his brother. Therefore, the statement of accused made before this witness, carrying of blood stained axe by the accused and clothes of accused stained with blood are so connected with the death of Lachchan Singh and they form part of the same transaction and as such, the evidence of PW-3 Islam Mohammed is admissible under Section 6 of the Evidence Act. Apart from that, the conduct of accused is also admissible under Section 8 of the Evidence Act, which envisages that "*any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences*

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or is influenced by any fact in issue or relevant fact and whether it was previous or subsequent thereto." The conduct of the accused/appellant that he was carrying blood stained axe, his clothes were stained with blood and on enquiry by Islam Mohammed (PW-3) as to why he is carrying axe and give the axe to him, the accused replied that he should not take axe from him, as he had quarreled with his brother and left the place while carrying axe in his hand. Therefore, in view of the above that the axe & clothes of accused were stained with blood and moreover, he has left the place by saying that he will not give the axe, as he has quarreled with his brother, the conduct of the accused is admissible under Section 8 of the Evidence Act.

So far as the evidence of PW-4 Raisingh is concerned, in Para-6 this witness has stated that accused stated that by attacking with the axe on the neck, head and cheek he has caused death of Lachchan Singh. Therefore, the above evidence of PW-4 Raisingh before whom the accused said to have been made extra judicial confession about committing murder of Lachchan Singh by attacking him with axe on his neck head and cheek comes within the purview of extra judicial confession and there is nothing in the examination-in-chief of this witness, which shows that above extra judicial confession was made by the accused in presence of the police.

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PW-9 Bhuwan Bhaskar has stated in his evidence that on coming to know about the death of Lachchan Singh he along with other persons went to Baloda for postmortem examination of the body of Lachchan. He saw injuries on the body of Lachchan Singh and after the postmortem when body of Lachchan Singh was being buried; the accused came at that place and stated that he has committed murder of his younger brother Lachchan Singh with axe. In the cross-examination of this witness, the defence has not been able to elicit any circumstance in order to discredit the testimony of this witness.

Therefore, from the evidence of PW-4 Raisingh & PW-9 Bhuwan Singh, it is established that accused made extra judicial confession regarding commission of murder of Lachchan Singh before these two witnesses.

As far as recovery of axe and blood stained clothes from possession of the accused is concerned, PW-1 Jagannath Prasad has stated in his evidence that under Ex.P-3 blood stained axe was recovered from the possession of accused and on the same day blood stained clothes of the accused were recovered from the possession of accused under Ex.P-4. PW-4 Raisingh has corroborated the above testimony of PW-1 Jagannath Prasad regarding recovery of blood stained axe and clothes from the possession of accused and in the cross-examination of these witnesses the recovery of axe and

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clothes have not been challenged. Moreover, the Investigating Officer PW-14 has proved the recovery of blood stained axe and blood stained clothes of the accused. Same were sent for chemical examination to Forensic Science Laboratory, Sagar from where report Ex.P-20 was received and as per FSL report these articles were found stained with blood. Therefore, the recovery of blood stained axe & clothes from possession of the accused has been established by impeccable evidence of the prosecution.

As far as the motive is concerned, PW-8 Suman Gond has stated that there was a dispute between the accused and deceased regarding the sale price of cart, some charge sheet was filed against Lachchan Singh on the report of Shyamlal and accused used to say to deceased Lachchan Singh that by selling cart he has implicated him in the crime and on account of that there was animosity between the two brothers. This fact has also not been challenged in the cross-examination.

In view of the above conclusions, it is established that the accused/appellant made extra judicial confession regarding commission of murder of his brother Lachchan Singh before PW-4 Raisingh & PW-9 Bhuwan Bhaskar and this extra judicial confession has been corroborated by the fact that accused was having animosity against his brother in connection with criminal case pending against

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the deceased and accused on account of sale of cart to one Shyamlal, as such, there was motive behind the crime. The extra judicial confession has been further corroborated by the evidence of PW-3 Islam Mohammed.

As per Sections 6 & 8 of the Evidence Act, which have been discussed above, and the fact that blood stained axe and blood stained clothes of the accused were recovered from the possession of the accused, we are of the considered opinion that the prosecution has been able to establish the charge against the accused based on the circumstantial evidence, as the evidence adduced by the prosecution points towards the fact that the accused was the author of crime in question and further the prosecution has been able to establish that there is no possibility of committing the crime by any other person except the accused.

In the result, we do not find any illegality or infirmity in the judgment of the trial court, the appeal being devoid of merit liable to be dismissed and same is dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Roshan/-

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